

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION,

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

*State of Nevada v. Abbott Labs., Inc. et al.*,  
Case No. CV02-00260

*State of Nevada v. American Home Products, et al.*,  
CA No. 02-CV-12086-PBS

*State of Montana v. Abbott Labs., Inc., et al.* D.  
Mont. Cause No. CV-02-09-H-DWM

**OPPOSITION OF THE STATES OF NEVADA AND MONTANA TO DEFENDANTS'  
MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF THEIR  
EMERGENCY MOTION FOR AN ORDER HOLDING PLAINTIFFS IN CONTEMPT,  
FOR PRESERVATION OF POTENTIALLY RELEVANT DOCUMENTS, AND FOR AN  
ACCOUNTING OF SPOLIATED DOCUMENTS**

The States of Nevada and Montana oppose defendants' motion for leave to file a reply brief in support of their pending emergency motion on two bases. First, the Court's local rules do not provide for a reply in support of motion absent the agreement of the parties or leave of Court. The States did not agree for the very reasons that the States now oppose the reply submission. The defendant drug manufacturers have had an ample opportunity to present their arguments to the Court. Notwithstanding their protestations to the contrary, the belatedly filed reply adds nothing to defendants' original positions. Second, the defendants should not be allowed to wait 14 days after the States' scheduled filing to submit *additional materials* in support of a motion it claimed was an "emergency" and to which they expected the States to respond on an expedited basis. The very nature of the materials submitted by defendants merely

confirms the earlier evidence: no witness and no party has identified any document that the States have destroyed. In fact, the witnesses' testimony was unanimous: they either did not have responsive information or preserved it. Thus, no sanction is warranted and the motion should be denied.

For all of these reasons, the States of Montana and Nevada respectfully ask the Court to deny the defendants' motion for leave to file a reply in support of their pending motion.

By /s/ Steve W. Berman

DATED: January 11, 2006.

Steve W. Berman  
Sean R. Matt  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

Thomas M. Sobol  
Edward Notargiacomo  
HAGENS BERMAN SOBOL SHAPIRO LLP  
225 Franklin Street, 26<sup>th</sup> Floor  
Boston, MA 02110  
Telephone: (617) 482-3700  
Facsimile: (617) 482-3003

COUNSEL FOR PLAINTIFFS  
STATE OF MONTANA AND  
STATE OF NEVADA

Brian Sandoval  
Attorney General of the State of Nevada  
L. Timothy Terry  
Assistant Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4714

Mike McGrath  
Attorney General of Montana  
Jon Ellingson  
Assistant Attorney General  
Justice Building  
215 North Sanders  
P.O. Box 201401  
Helena, MT 56920-1402  
(406) 444-2026

Joseph P. Mazurek  
CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH PLLP  
100 North Park Avenue, Suite 300  
P.O. Box 797  
Helena, MT 59601-6263  
(406) 449-4165

COUNSEL FOR PLAINTIFF  
STATE OF MONTANA

Brian Sandoval  
Attorney General of the State of Nevada  
L. Timothy Terry  
Assistant Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4714

COUNSEL FOR PLAINTIFF  
STATE OF NEVADA

### **CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **OPPOSITION OF THE STATES OF NEVADA AND MONTANA TO DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF THEIR EMERGENCY MOTION FOR AN ORDER HOLDING PLAINTIFFS IN CONTEMPT, FOR PRESERVATION OF POTENTIALLY RELEVANT DOCUMENTS, AND FOR AN ACCOUNTING OF SPOLIATED DOCUMENTS** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on January 11, 2006, a copy to LexisNexis File & Serve for Posting and notification to all parties.

By           /s/ Steve W. Berman            
Steve W. Berman  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
(206) 623-7292